



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MD 205-3121; FRL-9992-15-Region 3]

#### **Air Plan Approval; Maryland; Update to Materials Incorporated by Reference**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; administrative change.

**SUMMARY:** The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the Maryland state implementation plan (SIP). The regulations affected by this update have been previously submitted by the Maryland Department of the Environment (MD DOE) and approved by EPA. This update affects the SIP materials that are available for inspection at the EPA Regional Office.

**DATES:** This action is effective [insert date of publication in the Federal Register].

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. EPA requests that you email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section for information about the availability of this material at EPA.

**FOR FURTHER INFORMATION CONTACT:** Sharon McCauley, Office of Air Program Planning (3AP30), Air Protection Division, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215)814-3376.

Ms. McCauley can also be reached via electronic mail at [mccauley.sharon@epa.gov](mailto:mccauley.sharon@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the proposed SIP revisions to EPA. Once these control measures and strategies are approved by EPA, and after notice and comment, they are incorporated into the Federally-approved SIP and are identified in part 52 “Approval and Promulgation of Implementation Plans,” title 40 of the Code of Federal Regulations (40 CFR part 52). The full text of the state regulation approved by EPA is not reproduced in its entirety in 40 CFR part 52, but is “incorporated by reference.” This means that EPA has approved a given state regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. The information provided allows EPA and the public to monitor the extent to which a state implements a SIP to attain and maintain the NAAQS and to take enforcement action if necessary.

The SIP is a living document which a state revises as necessary to address its unique air pollution

problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and “Identification of plan” format is discussed in further detail in the May 22, 1997 **Federal Register** document.

On November 29, 2004 (69 FR 69304), EPA published a document in the **Federal Register** beginning the new IBR procedure for Maryland. On February 2, 2006 (71 FR 5607), May 18, 2007 (72 FR 27957), March 11, 2008 (73 FR 12895), March 19, 2009 (74 FR 11647), August 22, 2011 (76 FR 52278), and May 30, 2017 (82 FR 24549) EPA published updates to the IBR material for Maryland.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to the following regulations, statutes, and source-specific actions for Maryland:

#### **A. Added Regulations**

1. Code of Maryland Administrative Regulations (COMAR) citation 26.11.01, General Administrative Provisions, 26.11.01.11, Continuous Emissions Monitoring.
2. COMAR citation 26.11.14, Control of Emissions from Kraft Pulp Mills, 26.11.14.07, Control of NO<sub>x</sub> Emissions from Fuel Burning Equipment.
3. COMAR citation 26.11.19, Volatile Organic Compounds from Specific Processes, 26.11.19.26.1, Control of Volatile Organic Compound Emissions from Fiberglass Boat Manufacturing.

4. COMAR citation 26.11.29, Control of NO<sub>x</sub> Emissions from Natural Gas Pipeline Stations, 26.11.29.01 through 26.11.29.04.
5. COMAR citation 26.11.30, Control of Portland Cement Manufacturing Plants, 26.11.30.01 through 26.11.30.08.
6. COMAR citation 26.11.31, Quality Assurance Requirements for Opacity Monitors (COMs), 26.11.31.01 through 26.11.31.12.
7. COMAR citation 26.11.38, Control of Nitrogen Oxide Emissions From Coal-Fired Electric Generating Units, 26.11.38.01 through 26.11.38.05.
8. COMAR citation 26.11.39, Architectural and Industrial Maintenance (AIM) Coatings, 26.11.39.01 through 26.11.39.08.
9. COMAR citation 26.11.40, NO<sub>x</sub> Ozone Season Emission Caps for Non-trading Large NO<sub>x</sub> Units, 26.11.40.01 through 26.11.40.04.
10. In 40 CFR 52.1070(d), EPA approved State source specific requirements were added for two facilities, including; Raven Power Fort Smallwood LLC – Brandon Shores units 1 and 2, and H.A. Wagner units 1, 2, 3, and 4; and the National Gypsum Company (NGC).

## **B. Revised Regulations**

1. COMAR citation 26.11.01, General Administrative Provisions, 26.11.01.01, Definitions.
2. COMAR citation 26.11.01, General Administrative Provisions, 26.11.01.05, Records and Information.
3. COMAR citation 26.11.01, General Administrative Provisions, 26.11.01.10, Continuous Opacity Monitoring.

4. COMAR citation 26.11.02, Permits, Approvals, and Registration, 26.11.02.07, Procedures for Denying, Revoking, or Reopening and Revising a Permit or Approval.
5. COMAR citation 26.11.02, Permits, Approvals, and Registration, 26.11.02.11, Procedures for Obtaining Permits to Construct Certain Significant Sources.
6. COMAR citation 26.11.02, Permits, Approvals, and Registration, 26.11.02.12, Procedures for Obtaining Approvals of PSD Sources and NSR Sources, Certain Permits to Construct, Case-by-Case MACT Determinations in Accordance with 40 CFR part 63, subpart B.
7. COMAR citation 26.11.09, Control of Fuel Burning Equipment and Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations, 26.11.09.08, Control of NO<sub>x</sub> Emissions for Major Stationary Sources.
8. COMAR citation 26.11.10, Control of Iron and Steel Production Installations, 26.11.10.06, Control of Volatile Organic Compounds from Iron and Steel Production Installations.
9. COMAR citation 26.11.14, Control of Emissions from Kraft Pulp Mills, 26.11.14.06, Control of Volatile Organic Compounds.
10. COMAR citation 26.11.14, Control of Emissions from Kraft Pulp Mills, 26.11.14.07, Control of NO<sub>x</sub> Emission from Fuel Burning Equipment.
11. COMAR citation 26.11.19, Volatile Organic Compounds from Specific Processes, 26.11.19.26, Control of Volatile Organic Compound Emissions from Reinforced Plastic Manufacturing.

### **C. Removed Regulations**

1. COMAR citation 26.11.28, Clean Air Interstate Rule, 26.11.28.01 through 26.11.28.08.
2. COMAR citation 26.11.29, NO<sub>x</sub> Reduction and Trading Program, 26.11.29.01 through 26.11.29.15.
3. COMAR citation 26.11.30, Policies and Procedures Relating to Maryland's NO<sub>x</sub> Reduction and Trading Program, 26.11.30.01 through 26.11.30.09.
4. COMAR citation 26.11.33, Architectural Coatings, 26.11.33.01 through 26.11.33.14.
5. In 40 CFR 52.1070(d), EPA approved the removal of state source specific requirements for one facility; Constellation Power Source Generation, Inc. Brandon Shores Units #1 & 2; Gould Street Unit #3; H.A. Wagner Units #1, 2, 3 & 4; C.P. Crane Units #1 & 3; and Riverside Unit #4.

## **II. EPA Action**

In this action, EPA is announcing the update to the IBR material as of December 26, 2018 for the State of Maryland, revising text within 40 CFR 52.1070(b), and, also correcting entries for previously approved text within 40 CFR 52.1070(c) and (e). Also, within this IBR action, EPA is making editorial changes to the format of the table in paragraph (c) for clarity.

## **III. Good Cause Exemption**

EPA has determined that this rule falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date

otherwise provided for in the APA). This rule simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” Public comment is “unnecessary” and “contrary to the public interest” since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

#### **IV. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of previously EPA approved regulations promulgated by the State of Maryland and Federally effective prior to December 26 2018. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region III Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

##### **A. General Requirements**

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those

imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and



- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

## **C. Petitions for Judicial Review**

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Maryland SIP compilations had previously afforded interested

parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this “Identification of plan” update action for Maryland.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 29, 2019.

Cecil Rodrigues,  
Acting Regional Administrator,  
Region III.

40 CFR part 52 is amended as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

### **Subpart V--Maryland**

2. Section 52.1070 is amended by:

- a. Revising paragraph (b);
- b. In the table in paragraph (c):
  - i. Revising the column headings;
  - ii. Adding a centered heading before the center heading “26.11.01 General Administrative Provisions”;
  - iii. Revising the entries for “26.11.01.05”, “26.11.01.11”, “26.11.09.08”, “26.11.10.06”, “26.11.14.06”, “26.11.19.08”, “26.11.19.26”, and “26.11.19.26-1”.
  - iv. Removing the entry for “26.11.31”;
  - v. Adding a centered heading under the entry for “26.11.30.08”;
  - vi. Removing the row under the entry for “TM91-01 [Except Methods 1004A through E]”; and
  - vii. Adding a centered heading under the entry for “TM91-01 [Except Methods 1004A through E]”; and

- c. In the table in paragraph (e), revising the second entry for “2011 Base Year Emissions Inventory for the 2008 8-Hour Ozone National Ambient Air Quality Standard” and the entry for “Regional Haze Five-Year Progress Report.”

The revisions and additions read as follows:

**§ 52.1070 Identification of plan.**

\* \* \* \* \*

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to December 26, 2018, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Entries in paragraphs (c) and (d) of this section with the EPA approval dates after December 26, 2018 for the State of Maryland, have been approved by EPA for inclusion in the State implementation plan and for incorporation by reference into the plan as it is contained in this section, and will be considered by the Director of the Federal Register for approval in the next update to the SIP compilation.

(2) EPA Region III certifies that the following materials provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of the dates referenced in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference into the State implementation plan may be inspected at the Environmental Protection Agency, Region III, 1650 Arch Street,

Philadelphia, Pennsylvania 19103. To obtain the material, please call the Regional Office at (215) 814-3376. You may also inspect the material with an EPA approval date prior to December 26, 2018 for the State of Maryland at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(c)\* \* \*

**EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN  
THE MARYLAND SIP**

<b>Citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Additional explanation/citation at 40 CFR 52.1100</b>
<b>Code of Maryland Administrative Regulations (COMAR)</b>				
<b>26.11.01 General Administrative Provisions</b>				
* * * * *				
26.11.01.05	Records and Information	5/17/2010	11/7/2016, 81 FR 78048	(c)(172) Administrative changes to reporting and recordkeeping requirements.
* * *	* * *	*	*	
26.11.01.11	Continuous Emissions Monitoring	8/22/2010	11/7/2016, 81 FR 78048	
* * *	* * *	*	*	
<b>26.11.09 Control of Fuel Burning Equipment and Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations</b>				
* * *	* * *	*	*	

Citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.09.08	Control of NOx Emissions for Major Stationary Sources	7/20/2015	3/28/2018, 83 FR 13192	1. Revise H, H(1) and H(3), remove H(2), and recodify H(4) to H(3). 2. Revise I and remove I(3) and I(4). Previous approval (8/30/2016).
*	*	*	*	*
<b>26.11.10 Control of Iron and Steel Production Installations</b>				
*	*	*	*	*
26.11.10.06	Control of Volatile Organic Compounds from Iron and Steel Production Installations	5/9/2016	7/28/2017, 82 FR 35104	Removed reference to TM 90-01 from C(3)(b) and added reference to COMAR 26.11.01.11
*	*	*	*	*
<b>26.11.14 Control of Emissions from Kraft Pulp Mills</b>				
*	*	*	*	*
26.11.14.06	Control of Volatile Organic Compounds	3/3/2014	7/17/2017, 82 FR 32641	Amended to clarify volatile organic compound (VOC) control system and requirements at Kraft pulp mills (8/30/2016)
*	*	*	*	*
<b>26.11.19 Volatile Organic Compounds from Specific Processes</b>				
* * * * *				

<b>Citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Additional explanation/ citation at 40 CFR 52.1100</b>
26.11.19.08	Metal Parts and Products Coating	5/26/2014	10/1/2015, 80 FR 59056	Amends section title. Adds definitions. Section 26.11.19.08(B), Emission Standards, removed. Section 26.11.19.08(B), Incorporation by Reference, added. Section 26.11.19.08(C), Applicability and Exemptions, added. Section 26.11.19.08(D), Emission Standards, added.
* * *	* * *	* *		
26.11.19.26	Control of Volatile Organic Compound Emissions from Reinforced Plastic Manufacturing	9/28/2015	12/23/2016, 81 FR 94259	Amendment to .26A.
26.11.19.26-1	Control of Volatile Organic Compound Emissions from Fiberglass Boat Manufacturing	9/28/2015	12/23/2016, 81 FR 94259	New Regulation
* * *	* * *	* *		
<b>26.11.31 Quality Assurance Requirements for Opacity Monitors (COMs)</b>				
* * *	* * *	* *		
<b>Annotated Code of Maryland</b>				
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(e) \* \* \*

<b>Name of non-regulatory SIP revision</b>	<b>Applicable geographic area</b>	<b>State submittal date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
* * *	* * *	*		
2011 Base Year Emissions Inventory for the 2008 8-Hour Ozone National Ambient Air Quality Standard.	Baltimore, Maryland 2008 Ozone Moderate Nonattainment Area.	12/30/2016	8/9/2018, 83 FR 39365	See § 52.1075(r).
* * *	* * *	*		
Regional Haze Five-Year Progress Report	Statewide	8/9/2017	11/26/2018, 83 FR 60363	
* * *	* * *	*		

Editorial Note: This document was received for publication by the Office of the Federal Register on July 18, 2019.

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